IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1093 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAKSUD AHMED FATEHMOHAMMAD SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR KT DAVE AGP for Respondent Nos. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/03/2000

ORAL JUDGEMENT

#. Deputy Commissioner of Police, Zone II, Ahmedabad City, Ahmedabad passed an order on October 30, 1999, externing the petitioner from the territories of Police Commissionerate, Ahmedabad and districts of Gandhinagar,

Kheda, Mehsana and Ahmedabad (Rural) for a period of two year, taking into consideration the criminal activities of the petitioner. Prior to passing of the order, a show cause notice, as required under section 59 of the Bombay Police Act ("the Act" for short) was served. Thereafter, after following the procedure, externment order was passed. The order was carried in appeal before the appellate authority under the Act, as contemplated under Section 60 of the Act. The appellate authority, after hearing the parties, passed an order on December 7, 1999, dismissing the appeal. Aggrieved by the said orders, the petitioner has approached this Court with this petition under Article 226 of the Constitution of India.

#. Many contentions are raised by the petitioner in the petition. However, Mr. Tirmizi, learned advocate appearing for the petitioner has restricted his arguments to ground of delay in passing the order. He submitted that the last witness was examined on June 25, 1999 in the externment proceedings. Thereafter, there was total inaction on the part of the externing authority and the order came to be passed on October 30, 1999. This lapse of four months is not explained by the externing authority, and therefore, the order may be quashed and set aside, so also the order of the appellate authority.

#. Mr. K.T. Dave, learned APP, has opposed this petition. He tried to explain and justify the period between the last witness examined and the date of the order, but could not succeed for want of any suporting material.

#. Factually, there is no dispute about the fact that the last witness was examined in the externment proceedings on June 25, 1999 and the order came to be passed on October 30, 1999. During this period, there is no offence registered against the petitioner, as per the statement made at bar by Mr. Tirmizi. No affidavit is filed by the externing authority and as such, there is no attempt whatsoever on the part of the externing authority to explain the delay of four months' lapse. In the absence of any explanation or tangible reasons, such delay is good enough to vitiate the subjective satisfaction recorded by the authority and the order. It is apparent that the order is passed in the absence of causal connection and on grounds which are stale. In this view of the matter, the petition deserves to be allowed on this ground alone.

#. The petition is allowed. The impugned order of externment passed by the Deputy Commissioner of Police

Traffic Branch, on October 30, 1999 is hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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